

**Polhemus, Debra**

**From:** Bruce Spencer [bspencer@smithlawmt.com]  
**Sent:** Thursday, March 03, 2011 4:42 PM  
**To:** CVVINCENT@HOTMAIL.COM; Lake (Rep.), Bob; garybranae@gmail.com; glonky@aol.com; Essmann, Jeff; jimpetersonranch@gmail.com; kaufmann@mt.net; Van Dyk, Sen Kendall; ron.senate@gmail.com; ronarthun@gmail.com; senatorwittich@montana.com; tutvedt@montanasky.us  
**Cc:** Chris Manos; RyanZinke@yahoo.com; Polhemus, Debra; wcgowen@helenaabstract.com  
**Subject:** SB 378 notice required for recording

Committee Members:

On behalf of the State Bar of Montana I write to oppose SB 378. This bill would unnecessarily complicate every day real estate transactions. In addition, existing Montana law contains remedies for these problems. I am sorry I missed the hearing, but have listened to it on-line.

The action that precipitated the bill is that a lessee filed an abstract of a first right of refusal, and a bank or title underwriter is saying this clouds the title for refinancing.

I disagree that this document clouds the tile (the loan will have a due on sale clause so the bank is paid before title transfers and the right of first refusal only gives the lessee the right to match a purchase offer, he still takes subject to unpaid liens). A potential purchaser would want to have proof the right of first refusal is clear, but it should not effect a refinance, only a sale.

However in the event Sen. Zinke's constituent cannot get either the bank or title underwriter to change their minds, and the abstract was wrongfully filed and does cloud the title, she can sue for slander of title.

Montana has a common law action for slander of title. Slander of title as an action where one "maliciously publishes false matter which brings in question or disparages the title to property, thereby causing special damage to the owner." Felska v. Goulding (1989), 238 Mont. 224, 232, 776 P.2d 530, 535 (quoting First Sec. Bank v. Tholkes (1976), 169 Mont. 422, 427, 547 P.2d 1328, 1331).

The landowner may also file a declaratory judgment action under 27-1-101 MCA or an action to quiet the title under 70-28-101 MCA et. seq., if she feels the abstract was improperly filed. There are many avenues of redress that solve this specific matter, without a broad general requirement that effects all real estate transactions.

Sincerely,



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